In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-350

THE MIAMI BEACH FIRST NATIONAL BANK, AS EXECUTOR UNDER THE WILL OF LENORE P. HARTZ, DECEASED, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals was entered on April 30, 1971 (Pet. App. C1-C2). A petition for rehearing was denied on June 7, 1971 (Pet App. D1). No application for an extension of time for filing a petition for a writ of certiorari having been filed within the 90-day period prescribed by 28 U.S.C. 2101 (c), the 90-day period expired on September 5, 1971.[1]

[1] On September 14, 1971, after expiration of the 90-day statutory period, petitioner filed an application for an extension of time within which to file a petition for a writ of certiorari to and including September 8, 1971. On September 21, 1971, Mr. Justice Douglas signed an order extending the time to and including September 8, 1971, "without prejudice to the Court's consideration of whether this application has been filed in time."

The petition was filed on September 8, 1971. Since the 90-day time limitation is jurisdictional, the petition is untimely and should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971